Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
2010 Quadrennial Regulatory Review—	)	MB Docket No. 09-182
Review of the Commission's Broadcast	)	
Ownership Rules and Other Rules Adopted	)	
Pursuant to Section 202 of the	)	
Telecommunications Act of 1996	)	

COMMENTS OF HEARST TELEVISION INC.

Hearst Television Inc. ("Hearst"), by its attorneys, hereby submits comments in response to the Notice of Inquiry released May 25, 2010, in the above-captioned proceeding ("*Notice*").[1] The *Notice* seeks comment on the Commission's media ownership rules, including the television duopoly rule.

The digital era is underway, and the Commission, as it undertakes its first review of its media ownership rules since the digital television transition, must look *forward*—not backward—to fashion a regulatory framework that promotes and fosters localism, competition, and diversity. Digital technology has enabled local television stations, large and small, to expand and improve the quality and diversity of their free, over-the-air video services. Local television stations' ability to provide multiple channels of video programming has expanded the number of media "voices" in every local market.

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[1] Hearst owns and operates 35 full-power television stations, including six stations that operate as satellite stations. Hearst's stations are located in 25 different television markets throughout the country, from Maine to Hawaii, and provide highly localized, award-winning service to approximately 55 million Americans (18.3% of television households).

It is no secret that the competitive framework for local television is vastly different today than it was ten years ago. Indeed, each time the Commission conducts a new media ownership proceeding, it is confronted with an array of new media platforms for the delivery of information and entertainment. For example:

* In 2000, satellite television was becoming a new competitor, rapidly expanding the delivery of non-broadcast programming networks as well as broadcast stations into local markets throughout the country.

* In 2002, the Internet was emerging as a new provider of information and entertainment, and ultimately exploded into a multimedia platform giving rise to YouTube and literally thousands of websites and blogs that provide information and commentary.

* In 2006, telephone companies were investing billions of dollars to launch their own video programming services over fiber optic networks to provide yet another voice in the video marketplace.

* Today, smartphones and other new mobile devices such as the iPad are allowing consumers to access information and entertainment anytime from virtually anywhere in the world.

So what formerly was the *prospect* of new competition is now an undisputed *fact* for local television stations and is manifested each day as they compete for viewers and advertising revenue. If the past is prologue, the Commission may rest assured that ten years from now the audience shares of video providers will be smaller than they are today, and the number of video platforms will be greater than they are today.

The new video competition poses both new competitive and financial challenges to local television stations. Advertising revenues for local television stations in 2009 dropped more than 23.6% from 2008.[2] Advertising, of course, is a local television station's economic lifeblood, and

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[2] *See* Ad Revenue Track: 2009 TV Ad Revenue Figures, http://www.tvb.org/rcentral/adrevenuetrack/revenue/2009/ad_figures_1.asp (last visited July 5, 2010).

therefore, the competition from new video distribution platforms fragments stations' viewing *and* revenue. As the Commission is aware, the number of local television broadcast companies and stations in bankruptcy or reorganization is unprecedented. Indeed, between 1998 and 2008, the national average pre-tax profit for television stations across all markets declined by 56%.[3]

The difficult economic environment for broadcasting makes it increasingly difficult for local stations to bear the cost of local news, weather, local emergency information, local election coverage, and local political and public affairs programming that the nation has come to expect from local broadcasters. Local broadcast stations invest substantial station resources to produce top-quality, award-winning, in-depth local programming. A survey of local television stations conducted by the National Association of Broadcasters in the Commission's Future of Media proceeding revealed that stations who responded to the survey produced an average of 26.6 hours of local news programming per week—*not including* national news programming.[4] The NAB survey also revealed that responding stations spent more than 25% of their total station budget on local news operations (not including capital costs for local news) and committed 51% of their stations' employees to the production of local news.[5]

The new video platforms competing with local broadcast stations do not dedicate the same level of operational, personnel, and capital resources to develop high-quality, in-depth local news and other locally-originated programming—and certainly not on a universally *free*, over-

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[3] *See* Comments of the National Association of Broadcasters, *In the Matter of Examination of the Future of Media and Information Needs of Communities in a Digital Age*, GN Docket No. 10-25, Attachment C (May 7, 2010).

[4] *See* Comments of the National Association of Broadcasters, *In the Matter of Examination of the Future of Media and Information Needs of Communities in a Digital Age*, GN Docket No. 10-25, Attachment B, at 12-13 (May 7, 2010).

[5] *See id*.

the-air basis. Yet the new competition from video platforms, coupled with a challenging economy, has forced local television stations to eliminate jobs in response to the declines in advertising revenue and to undertake restructuring initiatives that may adversely impact local service—including the amount of resources available to commit to local programming that has been a hallmark of a local station's service to its community.

All of these challenges call for a fresh look at the Commission's local television station ownership rules, and Hearst respectfully urges the Commission to reassess the impact its local ownership restrictions have on the economic viability of local television service. The new competitive and financial realities of the expanding universe of video distributors cannot be ignored.

By consolidating ownership, operational, and technological resources, local television stations can achieve new economic efficiencies and compete more effectively in the digital era. Hearst understands the public policy and regulatory tension in this respect. The Commission should, of course, be concerned with *undue* concentration of media ownership at the local level. But the Commission should be equally concerned with promoting and fostering localism and with preserving the local dynamic that characterizes the American system of broadcasting.

In today's marketplace, every local television station manager must ask the following question: How can I realistically compete with hundreds of cable and satellite channels supported by advertising and subscriber revenues and burdened by little, if any, public service programming requirements, while, at the same time, provide expensive local news, local weather, local public affairs, and local emergency programming on my station? It is a fair question. To be effective providers of local news and information, local television stations must be able to achieve greater economic efficiencies. The Commission can facilitate these efficiencies by adopting a different standard, where appropriate, of common ownership and operation of multiple stations.

Hearst has a living, breathing example of a successful duopoly in the Sacramento DMA where it currently owns and operates KCRA and KQCA. Just two months ago, the stations' General Manager and News Director provided public comments at the Commission's media ownership workshop in Stanford, California. They highlighted the fact that common ownership has enabled the stations to amortize the high costs of their local news and award-winning political coverage across both stations.[6] The success and strength of KCRA's and KQCA's local programming and service to their local community provides real-time evidence of the efficiencies of common ownership and negates concerns some may have about undue concentration.

Nine years ago, when the Commission's media ownership proceedings were first initiated, Hearst conducted a survey that identified an average of 39 separately owned media "voices" in the nation's 210 media markets, including an average of 20 separately owned "voices" in smaller TV markets ranked 150-200.[7] That estimate did *not* include Internet news sites, multicast channels, satellite radio services, or low power radio stations. That was 2001—clearly, the number of separately owned media voices in local markets is appreciably greater today and will continue to expand with each new ownership proceeding.

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[6] A video archive of the testimony is available on the Commission's website at http://reboot.fcc.gov/video-archives (select May 21, 2010, Media Ownership Workshop hyperlink) (last visited July 6, 2010).

[7] *See* Comments of Hearst-Argyle Television, Inc., *In the Matter of Cross-Ownership of Broadcast Stations and Newspapers*, MM Docket No. 01-235, at 7-8 & Exhibit 1 (December 3, 2001).

In February 2003—as part of the Commission's 2002 media ownership proceeding—Hearst proposed a new local television ownership metric as a method for determining undue concentration of media ownership.[8] The proposal would replace the existing local ownership rule's "voice count" and "top four" restrictions with a two-part analysis grounded in principles of antitrust law. Rather than focus on market *revenue* for purposes of a local ownership metric, the focus in the proposal was on market *audience share*. The proposal would be subject, of course, to customary antitrust review, but it would presumptively permit common ownership of local television stations if (1) the combination's collective share of the viewing audience is 30% or less and (2) the resulting concentration of audience share of the local television stations, together with the *increase* in concentration of such audience share, satisfied a standard based on a general numerical antitrust standard in the Department of Justice and FTC's *Horizontal Merger Guidelines*. The Hearst proposal is outlined in greater detail in its February 3, 2003 comments on file with the Commission. For the Commission's convenience, a copy of those comments are attached as Exhibit A.

The proposal has a number of advantages. *First*, it measures audience share across broadcast, cable, and DBS video platforms. *Second*, it provides a reasonable measure of stability because small changes in audience share will not affect the metric. *Third*, the proposal is equally applicable to all markets—large and small. *Fourth*, the proposal provides bright line tests—allowing the Commission to evaluate proposed combinations more quickly and efficiently.

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[8] *See* Reply Comments of Hearst-Argyle Television, Inc., *In the Matter of 2002 Biennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Cross Ownership of Broadcast Stations and Newspapers*, *Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets*, *Definition of Radio Markets*, MM Docket Nos. 02-277, 01-235, 01-317, 00-244, at 13-19 & Appendix (February 3, 2003) (attached as Exhibit A).

The proposal would not lead to a wave of local media mergers leading to unacceptable market concentration. In fact, economic experts that the Commission, itself, relied upon in the 2002 media ownership proceeding commented that the bright line test in the Hearst proposal was "stricter than FTC enforcement" and "only a small step away" from the Commission's own rules.[9] Further, the new *Horizontal Merger Guidelines* proposed by the Federal Trade Commission and the U.S. Department of Justice on April 23, 2010, would increase the thresholds used to define the post-merger market concentration levels that may trigger additional regulatory scrutiny or carry a presumption of market power.[10] These proposed changes to the FTC and DOJ market concentration levels are yet another indicator that that Hearst's proposed ownership metric is, in fact, a modest and conservative response to the accelerating competition and diversity in local video markets.

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[9] Joint Declaration of Luke Froeb, Padmanabhan Srinagesh, and Michael Williams in Support of Comments of Hearst-Argyle Television, Inc., *In the Matter of 2006 Biennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, 2002 Biennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Cross Ownership of Broadcast Stations and Newspapers, Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets, Definition of Radio Markets*, MM Docket Nos. 06-121, 02-277, 01-235, 01-317, 00-244, at 11, ¶ 20 (October 23, 2006).

[10] A copy of the *Guidelines* is available electronically from the Federal Trade Commission's "Horizontal Merger Guidelines Review Project" page on the FTC's website: http://www.ftc.gov/os/2010/04/1004420hmg.pdf (last visited July 12, 2010).

The Commission has a unique opportunity to bring its local television station ownership policies more in line with the competition that exists in local video markets and the economic burdens on local televisions to provide top-quality local television service to local viewers. The Commission should use this proceeding to usher in a new, more flexible and competitive local television station ownership policy for the digital era. Hearst respectfully urges the Commission to include its proposal in the Commission's forthcoming Notice of Proposed Rulemaking in this proceeding.

Respectfully submitted,

HEARST TELEVISION INC.

Wade H. Hargrove

Mark J. Prak

David Kushner /cfm

David Kushner

Charles F. Marshall

Charles F. Marshall

BROOKS, PIERCE, MCLENDON,
HUMPHREY & LEONARD, L.L.P.
Wachovia Capitol Center, Suite 1600
150 Fayetteville Street (27601)
Post Office Box 1800
Raleigh, North Carolina 27602
Telephone: (919) 839-0300
Facsimile: (919) 839-0304

Its Attorneys

July 12, 2010

EXHIBIT A

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
2002 Biennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996	)	MB Docket No. 02-277
	)	
Cross-Ownership of Broadcast Stations and Newspapers	)	MM Docket No. 01-235
	)	
Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets	)	MM Docket No. 01-317
	)	
Definition of Radio Markets	)	MM Docket No. 00-244

REPLY COMMENTS OF HEARST-ARGYLE TELEVISION, INC.

Wade H. Hargrove
Mark J. Prak
David Kushner
Charles Marshall

BROOKS, PIERCE, McLENDON,
HUMPHREY & LEONARD, L.L.P.
First Union Capitol Center, Suite 1600
150 Fayetteville Street Mall (27601)
Post Office Box 1800
Raleigh, North Carolina 27602
Telephone: (919) 839-0300
Facsimile: (919) 839-0304

Counsel to Hearst-Argyle Television, Inc.

February 3, 2003

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Summary

In light of the current state of competition and diversity in the local media marketplace, the D.C. Circuit's interpretation of Section 202(h) of the 1996 Act, and the evidence before the Commission to date, Hearst-Argyle respectfully urges the Commission (1) to relax substantially the local television ownership rule, in the manner advocated herein, and (2) to repeal the newspaper/broadcast cross-ownership rule in its entirety.

The record empirical evidence demonstrates the following: Competition and diversity are flourishing through the explosive growth of news media outlets that compete directly against broadcast television for both local and national news. Indeed, the various Media Ownership Working Group studies show that consumers use newspapers, the Internet, and radio as substitutes for television news; that the viewing share of broadcast television has declined in the last two decades; that news-talk radio is the most popular radio format, thereby providing competition for television news programming; that viewers increasingly use cable for local news and current affairs almost on parity with broadcast television; and that consumers' affinity for non-broadcast news outlets will continue to expand in the immediate future.

The message from this empirical data is unmistakable: Consumers enjoy multiple and diverse outlets for news, information, and entertainment competing for their attention at the local level. And the growth in these alternative outlets shows that the current local television ownership rule's insular counting of only local television stations to the exclusion of all other media that may divert and capture the attention of consumers is no longer tenable. Because the Commission's public interest goals of competition and diversity are fully preserved in the current media marketplace, the current local television ownership restriction is not "necessary in the public interest" and, therefore, must be relaxed.

Opponents of relaxation ignore the massive data detailing the wealth of multiple and diverse

media outlets competing for consumers' attention. They ignore the lack of empirical evidence supporting their view that common ownership will stifle competing and divergent viewpoints. They ignore the economic principles that will drive a common owner of local stations to diversify to attract a broader and more diverse audience. And they ignore the critical fact that the only empirical data relevant to diversity militate in favor of relaxation of the local television ownership rule.

In light of this evidence, together with the financial pressures on broadcasters resulting from the DTV transition and the increasing costs of local news production, it is time to revise and relax the local television ownership rule, and such revision and relaxation should be predicated upon an "audience share" metric. Consequently, Hearst-Argyle supports the principles of NAB's proposal, which relies on audience shares and provides a conceptually new measure of diversity and competition in local television markets.

However, Hearst-Argyle also offers for the Commission's consideration an alternative approach to revision of the rule that is derived as an analog of antitrust law and analysis. Hearst-Argyle's proposal is two-fold: (1) The Commission should permit any common ownership of local television stations as long as the combination's collective audience share is 30% or less, and (2) the resulting concentration, together with the change in concentration, of audience share, post-combination, must satisfy a standard that is an analog of the general standard set forth in Section 1.51 of the Department of Justice and FTC's *1992 Horizontal Merger Guidelines* utilizing a Herfindahl-Hirschman Index ("HHI") analog for audience share. Hearst-Argyle believes that this proposal, as detailed herein, builds appropriately on the good work of NAB and satisfies the Commission's desire, as expressed by Chairman Powell, to find an antitrust analog for its diversity and competition analysis.

Hearst-Argyle believes that this approach has numerous merits to recommend it for Commission consideration, including:

* The approach captures consumer substitutability of television channels, be they over-the-air or cable or DBS, and avoids the arbitrariness of voice

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Definition of Radio Markets	)	MM Docket No. 00-244

To: The Commission

REPLY COMMENTS OF HEARST-ARGYLE TELEVISION, INC.

Hearst-Argyle Television, Inc. ("Hearst-Argyle"), by its attorneys, submits these reply comments in response to the *Notice of Proposed Rulemaking* ("*Notice*"), FCC 02-249, released September 23, 2002, in the above-captioned proceeding. In light of the current state of competition and diversity in the local media marketplace, Hearst-Argyle respectfully urges the Commission (1) to relax substantially the local television ownership rule, in the manner advocated herein, and (2) to repeal the newspaper/broadcast cross-ownership rule in its entirety.

In Section 202(h) of the Telecommunications Act of 1996, Congress imposed a statutory mandate upon the Commission to modify or repeal any ownership rule that is no longer "necessary in the public interest."[1] Historically, the Commission has considered the ideals of competition and diversity as hallmarks of the public interest when reviewing the impact of its local ownership

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[1] Pub. L. No. 104-104, § 202(h) (1996).

regulations. But the deregulatory presumption[2] imposed by Congress in Section 202(h) requires that the Commission, at a minimum, provide empirical evidence to demonstrate that an ownership rule is necessary to protect competition and diversity in the local media marketplace. In the case of the current local television ownership rule and the newspaper/broadcast cross-ownership rule, the empirical evidence demonstrates the opposite—American consumers enjoy multiple and diverse news, information, and entertainment outlets competing for their attention. Accordingly, it is time to repeal the newspaper/broadcast cross-ownership rule and to revise wholesale and relax substantially the local television ownership rule.

I. The Local Television Ownership Rule Should Be Relaxed Substantially to Reflect the Competitive and Diverse Outlets Available to Consumers

A. Record Evidence Demonstrates That Even As Television Audience Shares Are Declining, the Number and Popularity of Competing News and Information Outlets Is Expanding

The current local television ownership rule, as modified by the Commission's *1999 Local Television Ownership Order*,[3] prohibits an entity from owning two broadcast television stations in a single Nielsen Designated Market Area ("DMA") unless: (1) the stations' Grade B contours do not overlap or (2) at least eight independent, full-power broadcast television stations remain in the market after the merger *and* at least one of the stations is not among the top four-ranked stations in the market. While the Commission's *1999 Local Television Ownership Order* acknowledged that duopolies provide important economic advantages to media consumers (e.g., offering financial assistance to a struggling station, providing more resources for local programming), it ultimately

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[2] *See Fox Television Stations, Inc. v. FCC*, 280 F.3d 1027, 1048 ("Section 202(h) carries with it a presumption in favor of repealing or modifying the ownership rules"), *reh'g granted*, 293 F.3d 537 (D.C. Cir. 2002).

[3] *See* Review of the Commission's Regulations Governing Television Broadcasting, *Report and Order*, 14 FCC Rcd 12903 (1999).

determined that applying a voices test and a "Top 4" rule to proposed duopolies were critical to ensure that local markets "remain sufficiently diverse and competitive."[4]

The current local television ownership rule, however, cannot stand against the robust competition for news, information, and entertainment programming in local media marketplaces today, particularly in light of the D.C. Circuit's decision in *Sinclair*.[5] For example, today competition and diversity are flourishing through the explosive growth of news media outlets that compete directly against broadcast television for both local and national news. In previous filings before the Commission on the newspaper/broadcast cross-ownership rule, Hearst-Argyle provided a comprehensive examination of the nation's 210 DMAs which identified an average of 81 "traditional" media voices in each DMA for which there were 39 separate owners.[6] That study is as relevant to the local television ownership rule as it is to the newspaper/broadcast cross-ownership rule. As cable television, direct broadcast satellite ("DBS"), and the Internet continue to reach more American consumers, they increasingly provide competition to broadcast television as the "primary source of news and information for most Americans."[7] And this growth in alternative outlets shows that the current rule's insular counting of local television stations to the exclusion of all other media which may divert and capture the attention of consumers is no longer tenable.

The Commission's recent Media Ownership Working Group studies, as well as its recently-released *Ninth Annual Report on Video Competition*,[8] underscore the severity of the

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[4] *1999 Local Television Ownership Order* at ¶ 70.

[5] *See Sinclair Broadcast Group v. FCC*, 284 F.3d 148 (D.C. Cir. 2002).

[6] *See* Comments of Hearst-Argyle, MM Docket No. 01-235 (filed Dec. 3, 2001), at Exhibit 1. The "traditional" media voices counted are precisely those that the Commission currently uses in its radio/television cross-ownership rule, 47 C.F.R. § 73.3555(c).

[7] *1999 Local Television Ownership Order* at ¶ 40.

[8] *See* Annual Assessment of the Status of Competition in the Market for the Delivery of (continued...)

challenge to broadcasters. One particular study finds "clear" evidence that audiences use newspapers and the Internet as substitutes for television news and "some" evidence that audiences use radio as a substitute for television news.[9] These data comport with the D.C. Circuit's mandate that the Commission must include non-broadcast "voices" in any voice test used to administer the local television ownership rule. In the *Sinclair* case, the court flatly rejected the Commission's decision to count only broadcast television stations as "voices" for purposes of the rule, while counting television, radio, newspapers, and cable systems as "voices" for purposes of its radio/television cross-ownership rule:

> Having found for purposes of cross-ownership that counting other media voices "more accurately reflects the actual level of diversity and competition in the market," the Commission never explains why such diversity and competition should not also be reflected in its definition of "voices" for the local ownership [duopoly] rule.[10]

Non-broadcast news outlets are now significant competitors with broadcast television. Although broadcast television still commands the largest audience shares, those shares have declined steadily as the number of competing media outlets has expanded. A Media Ownership Working Group study reports that between 1984 and 2001, the prime time viewing share of network affiliates dropped from 69.2% to 49.6% and the all-day viewing share for network affiliates dropped from 63.5% to 37.4%.[11] The Commission's *Ninth Annual Report on Video Competition* describes similar

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[8](...continued)
Video Programming, *Ninth Annual Report*, FCC 02-338 (released Dec. 23, 2002).

[9] Joel Waldfogel, *Consumer Substitution Among Media* (Sept. 2002) (Media Ownership Working Group 2002-3), at 3.

[10] *Sinclair*, 284 F.3d at 164.

[11] *See* Jonathan Levy et al., *Broadcast Television: Survivor in a Sea of Competition* (Sept. 2002) (Media Ownership Working Group 2002-12), at 21-23; *see also* Waldfogel, MWOG 2002-3, at 15 (finding that television viewing had "declined steadily" from 37.3% to 36.8% between 1994 and 2000).

declines in both prime time and total viewing shares for broadcast television.[12]

As broadcast viewing shares decline, the popularity of competing news outlets continues to rise. The all-day viewing shares for cable television grew from 25.7% to 49.7% between 1990 and 2000, and the ratio of broadcast audiences to cable audiences during prime time has been cut almost in half—from 9-1 to 5-1.[13] Radio also provides competition for news programming. A Media Ownership Working Group study reports that news-talk radio was the most popular format among a sample radio audience and that the number of news radio stations increased between 1993 to 1997.[14] DBS programming is now available nationwide from two competing outlets, DirecTV and EchoStar, and the *Ninth Annual Report* found that DBS is garnering an increasing share (up to 20.3%) of the MVPD market and cutting into cable's historical primacy in that arena.[15] In addition, both daily and weekly newspapers remain vibrant and established competitors to broadcast television as a reliable source of local news and information.

Competition from cable television is particularly pointed in news programming—even at the local and regional level. A Nielsen survey found that among those Americans who use television as their principal source of local news and current affairs, 67% watch broadcast news and 58% watch cable.[16] As of July 2001, as many as 22.3 million cable subscribers had access to *local* or *regional* news programming (which often provides community news and information on topics ranging from

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[12] *See Ninth Annual Report* at ¶ 80.

[13] *See* Levy, MOWG 2002-12, at 38. This figure is based upon a comparison of the four strongest broadcast networks against the four strongest cable channels.

[14] *See* Waldfogel, MOWG 2002-3, at 16, 29, Table 4.

[15] *See Ninth Annual Report* at ¶ 58.

[16] *See* Nielsen Media Research, *Consumer Survey on Media Usage* (Sept. 2002) (Media Working Group Study 2002-8), at 72-78.

school closings to government meetings).[17]

Perhaps most importantly, Nielsen consumer research data suggest that audiences' affinity for non-broadcast news outlets—particularly the Internet—will continue to expand in the immediate future. When Nielsen survey participants were asked what news outlets they would be "more likely" to use in the future, a plurality of respondents chose the Internet (24.7%), followed by cable (21.8%) and broadcast television (18.2%). This statistic is buttressed by the meteoric rise in Internet availability to American homes and businesses. While Internet access was "virtually nonexistent" in 1994, Internet use grew from 15.1% in 1997 to 56.4% in 2001.[18]

The message from this empirical data is unmistakable. Consumers enjoy multiple and diverse outlets for news, information, and entertainment competing for their attention at the local level. Because the Commission's public interest goals of competition and diversity are fully preserved in the current media marketplace, the current local television ownership restriction is not "necessary in the public interest," and, therefore, it must be relaxed.

B. Opponents of Relaxation Ignore the Law and the Empirical Evidence

Several public interest and consumer groups, in their opening comments, have urged the Commission to retain the local television ownerhsip rule. Stated generally, their primary arguments appear to be (1) that the Commission should restrict any "voice test" to include only broadcast television stations and (2) that common ownership of television stations will reduce viewpoint diversity.

The first argument is purely an opportunistic one. It ignores the wealth of multiple and diverse media outlets detailed above that are available to consumers—news-talk radio; local,

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[17] *See* Levy, MOWG 2002-12, at 126 .

[18] *See* Waldfogel, MOWG 2002-3, at 16-17 (documenting Internet use from 1997-2000); Levy, MOWG 2002-12, at 68 (documenting Internet use for 2001).

regional, and national cable news programming; daily and weekly newspapers; and a near-endless stream of local information on Internet web sites, bulletin boards, and email lists. Their argument also wholly sidesteps the D.C. Circuit's mandate in *Sinclair* that the Commission's voice test must include non-broadcast voices to maintain regulatory parity with the radio/broadcast cross-ownership rule (although some commenters also seek to tighten that rule as well). Finally, the assertion that broadcast television remains the "primary source" of news ignores the most crucial, and most telling, statistic on competition: while broadcast television viewing shares continue to decline, the number and popularity of cable, DBS, radio, and Internet news outlets continues to expand.[19] Whether economists agree that the growth and popularity of these new media outlets constitute "complements" or "substitutes" is immaterial, for it is obvious that a larger and more diverse number of news outlets are competing for the attention of consumers every day. Whether and to what extent citizens choose to use these competing news outlets are left solely to the consumer.

The second general argument of the public interest groups is that the merger of news operations, staff, and technical resources will offer less opportunity for co-owned stations to air competing and divergent viewpoints. This charge has been leveled and debated for decades,[20] but there never has been sufficient empirical evidence to support it. Here, much of the evidence offered by groups such as the Communications Workers of America, United Church of Christ, and the AFL-CIO is anecdotal and focuses on reports of merged companies consolidating or canceling local newscasts. Generally, the efficiencies and additional resources that flow from a merger usually

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[19] Broadcast television itself remains competitive in local markets. In a sample of 10 Nielsen DMAs, a MOWG study reported a dramatic increase in the number of television broadcast outlets between 1960 to 1980 and again from 1980 to 2000. In fact, 9 of the 10 markets had at least five local television stations. *See* Roberts et al., *A Comparison of Media Outlets and Owners for Ten Selected Markets (1960, 1980, 2000)* (Sept. 2002) (Media Ownership Working Group 2002-1).

[20] *See, e.g.*, *Metro Broadcasting, Inc. v. FCC*, 497 U.S. 547, 566 (1990), *overruled on other grounds by Adarand Constructors, Inc. v. Pena*, 515 U.S. 200 (1995); *National Citizens Committee for Broadcasting v. FCC*, 436 U.S. 775, 795 (1978).

provide stations with opportunities to *increase* local news coverage—opportunities that currently are unavailable to many local stations struggling with the high costs of producing local news, transitioning to digital television, and competing with multiple news outlets. Indeed, several commenters that own duopolies have detailed that their stations were able to improve the overall amount and quality of local programming.[21]

Further, the notion that sharing newsgathering resources will lead to a consolidation of viewpoints is offset by an equally plausible notion—that market forces will drive co-owned stations to attract a broader and more diverse audience.[22] And whereas the former argument relies on anecdote, this latter notion is actually buttressed by empirical data, reported in a Media Ownership Working Group study, that common ownership of media outlets (specifically, cross-owned newspapers and television stations) does not result in a predictable pattern of news coverage and commentary about political events.[23] Until there is persuasive empirical evidence demonstrating that owners will purposefully narrow their viewpoints at the same time that they expand their operations and audience reach—an idea that seems antithetical to elementary economics—certain commenters' fears about viewpoint diversity remain unfounded.

Finally, the only empirical data relevant to diversity militate in favor of substantial relaxation. When reviewing its media ownership rules, the Commission considers not only

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[21] *See, e.g.*, Comments of Sinclair Broadcast Group at 26-28; Comments of Nexstar Broadcasting Group and Quorum Broadcast Holdings at 8-9; Comments of Coalition Broadcasters LIN Television et al. at 15-33; Comments of Belo Corp. at 22-25.

[22] *See Notice* at ¶ 82 & n.159 (citing economic studies supporting the plausibility of this argument).

[23] *See* David Pritchard, *Viewpoint Diversity in Cross-Owned Newspapers and Television Stations: A Study of News Coverage of the 2000 Presidential Campaign* (Sept. 2002) (Media Ownership Working Group 2002-2).

viewpoint diversity, but also outlet diversity, source diversity, and program diversity.[24] While the Commission continues to focus on viewpoint diversity as the "primary goal" of its policymaking efforts, the other elements of diversity often serve as proxies to "protect and advance" viewpoint diversity.[25] As a result, evidence of outlet, source, and program diversity is critical to help build a proper evidentiary construct for the otherwise elusive concept of viewpoint diversity. In the case of the local television ownership rule, there is an abundance of diverse media outlets offering a near-endless and diverse array of programming, both in format (e.g., local newscasts, regional sports events, television biographies, political and business roundtables) and in content (e.g., food/nutrition, pop music, nature and wildlife, science fiction, home decorating). This fact, while seemingly self-evident from a single glance a local television guide, is fully supported by the empirical evidence, discussed above, from the Media Ownership Working Group studies, the *Ninth Annual Report*, and Hearst-Argyle's comprehensive "independent voices" analysis.

C. A Relaxed Local Television Ownership Rule Should Be Predicated on an "Audience Share" Metric

In light of the evidence, discussed above, of the declining audience shares for broadcast television, the increasing availability of alternative outlets for news and information programming, and the lack of any empirical data to retain the existing rule as "necessary in the public interest," together with the evidence adduced by other commenters, including the financial pressures of DTV conversion, the declining financial position of many smaller market television broadcasters, and the increasing expenses of local news production,[26] the local television ownership rule cannot persist in

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[24] *See Notice* at ¶ 34.

[25] *See Notice* at ¶¶ 33-50 (citing outlet and source diversity as proxies for viewpoint diversity and inviting comments to determine whether they should be considered as separate and equal policy goals).

[26] *See, e.g.*, Comments of NAB at 71-79; Comments of Coalition Broadcasters LIN (continued...)

its current form. Indeed, it is now clear that any version of the rule that relies on a voice count will remain arbitrary, whether that voice count counts local television stations only or other types of media outlets, and will likely continue to affect negatively opportunities to bring the benefits of common ownership to any but the largest markets. Instead, a relaxed local television ownership rule, like the two proposals discussed below, should be predicated upon an "audience share" metric.

1. The NAB's "10/10" Proposal Has Much to Recommend It

As a consequence of the myriad difficulties with the rule in its current form, NAB has proposed an entirely new manner of approaching local television ownership, and a number of parties have already endorsed that approach in their initial comments.[27] Hearst-Argyle also supports the NAB proposal, which relies on audience shares and provides a conceptually new measure of diversity and competition in local television markets.

NAB should be commended for developing an approach to local common television ownership that achieves three critical milestones: *First*, by aggregating audience shares across all channels that viewers may watch, NAB's proposal captures the substitutability—from the consumer's perspective—of local broadcast television stations with cable and DBS channels. *Second*, by utilizing Nielsen share data as the metric, NAB avoids the difficulties inherent in any voice counting methodology. *Third*, and finally, and perhaps most importantly, NAB's proposed rule is simple. By predicating the proposed rule only on *television channels*, NAB's proposal allows the Commission to avoid having to determine definitively whether various and sundry media (such

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[26](...continued)
Television et al. at 4-10; Comments of Gray Television at 17-19; Comments of Granite Broadcasting at 12-13.

[27] *See* Comments of NAB at 79-84; Comments of Coalition Broadcasters LIN Television et al. at 11; Comments of Duhamel Broadcasting Enterprises at 2; Comments of Pappas Telecasting at 13-15; Comments of Paxson Communications at 30-31 (supporting NAB's proposal as transitional rule towards complete elimination).

as radio, newspapers, and the Internet) are substitutes for one another—which really focuses on substitutability from the advertiser's perspective—as well as providing a logical underpinning to the rule that should help it survive judicial scrutiny vis-à-vis the Commission's other local ownership rules, particularly the radio/television cross-ownership rule that was the stumbling block for the *Sinclair* court.

Despite these many merits—all of which should favor NAB's "10/10" proposal over the current rule—NAB's initial proposal still leaves a number of gaps. For example, NAB leaves for case-by-case analysis triopolies and possible combinations of two stations each with an audience share greater than 10%. NAB's proposal also does not handle in a clear manner treatment of failed, failing, and unbuilt stations, which is why, presumably, the Coalition Broadcasters (LIN Television et al.) supplemented the NAB's proposal with their own variation.[28] And NAB's proposal does not deal expressly in any way with the presumed treatment of full-power satellite stations (of which Hearst-Argyle owns two). Each of these "gaps" serves to leave some market uncertainty that makes it more difficult for parties to structure their business affairs.

In addition to these gaps, which are easy enough to remedy with supplementation, NAB's proposal has two principal shortcomings, both of which may be more theoretical than likely to occur in practice. First, although Hearst-Argyle is aware of no DMA in which such a circumstance could ever exist, NAB's proposal does, theoretically, permit a station with, say, a 9.0 rating to combine with a station with a 91.0 rating. This theoretical combination would "own" 100% of the audience share, but it would not necessarily be a merger to monopoly since several other local television stations, as well as all of the cable and DBS channels, may remain in the market with audience shares below Nielsen's reportable levels. In addition to its practical unlikelihood, it is also worth observing that such a merger would still remain subject to standard antitrust review, which would almost certainly prevent such a combination. Second, and more probable, but still unlikely, is the

[28] *See* Comments of Coalition Broadcasters LIN Television et al. at 12-14.

fact that the audience share data are subject to manipulation by parties desiring to combine. A station with a 10.0 audience share desiring to combine with a station with a 13.4 audience share, for instance, could purposely program weak programming during a sweeps month in an attempt to nudge its audience share to a 9.9, thereby allowing the combination under the proposal's "10/10" presumption. However, NAB has already greatly reduced the chances for such manipulation by proposing a four book Nielsen average and by using an audience share daypart, 7:00 a.m. to 1:00 a.m., that is so broad that rank manipulation becomes much more difficult. In practice, therefore, neither of these shortcomings should prove fatal to NAB's proposal.

Most importantly, however, NAB's proposal suffers from one conceptual difficulty that may or may not be remediable, to wit, NAB selected a 10.0 audience share as its threshold for its proposed rule's presumptions. Why "10"? NAB states that "the choice of a 10 viewing share as the presumptive 'cut-off' point for allowing duopolies separates market leading from non-leading stations on a reasonably consistent basis across DMAs of varying size."[29] This rationale strikes Hearst-Argyle as generally reasonable and accurate; however, there is no hard evidence that "10" is the ideal cut-off point, rather than 9 or 11 (or 9.2 or 10.8, for that matter), and neat and tidy numbers, like "10," always lead to questions as to whether they are mere artifacts of our base 10 numbering system. The real difficulty, of course, is the question as to whether "10" can be sufficiently justified to avoid merely substituting one arbitrary rule (the current "8" independent voices test) with another. Hearst-Argyle believes that it can be so justified but offers, for the Commission's consideration, an alternative proposal, discussed below, that avoids the question altogether.

In sum, Hearst-Argyle fully supports NAB's proposal, commends NAB for its hard work in formulating it, and requests that the Commission carefully consider it as a replacement for the current rule.

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[29] Comments of NAB at 82.

2. As an Alternative, the Local Television Ownership Rule Could Permit Common Ownership of Television Stations Whose Collective Audience Share Is 30% or Less and Which Do Not Otherwise Attain Undue Concentration of Audience Share

If, for any reason, the Commission should not be inclined to adopt NAB's proposal, Hearst-Argyle has formulated an alternative approach to the structure of a revised local television ownership rule that Hearst-Argyle respectfully requests the Commission to consider. Hearst-Argyle's proposal is two-fold: (1) The Commission should permit any common ownership of local television stations as long as the combination's collective audience share is 30% or less, and (2) the resulting concentration, together with the change in concentration, of audience share, post-combination, must satisfy a standard that is an analog of the general standard set forth in Section 1.51 of the Department of Justice and FTC's *1992 Horizontal Merger Guidelines* utilizing a Herfindahl-Hirschman Index ("HHI") analog for audience share. Hearst-Argyle believes that this proposal, as detailed below, builds appropriately on the good work of NAB and satisfies the Commission's desire, as expressed by Chairman Powell, to find an antitrust analog for its diversity and competition analysis.[30]

Hearst-Argyle's proposal is intended to provide as direct an analog to standard antitrust analysis as feasible while preserving certain elements of simplicity not always present in antitrust analysis. Antitrust analysis and case law are well-developed and sufficiently well-understood for them to serve as the ideal basis for the Commission's diversity and competition concerns in

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[30] As *Communications Daily* has reported:

> [Chairman] Powell said he had staff working to develop [an] equivalent to antitrust law's HHI metric for competition: "I've told every economist in my building I'll give an award to the first to find an HHI to measure diversity."

Comm. Daily (Jan. 17, 2003).

formulating local structural ownership rules. Hearst-Argyle's proposal is also intended to build on the principal strengths of NAB's proposal. Accordingly, *audience share* should serve as the basic metric, and this audience share should be broadly measured in three different ways: (1) by taking a broad approach to what consumers may watch, that is by aggregating the audience share over all channels available to viewers---specifically, all local broadcast channels, all out-of-market broadcast channels viewable over the air, and all cable and DBS channels---and thereby capturing the substitutability of these channels from a viewer's perspective; (2) by taking a broad daypart share measure, 7:00 a.m. to 1:00 a.m., to truly capture the "share" of audience that watches a particular television channel; and (3) by taking a sufficiently broad historical average, the most recent four Nielsen books, providing a current annualized average audience share measure. To this point, Hearst-Argyle has simply borrowed wholesale NAB's good proposal.

The first prong of Hearst-Argyle's proposed rule would establish a 30% collective audience share as a bright-line hard cap: If the proposed combination's collective audience share exceeds 30%, then the combination would be impermissible. If, however, a proposed combination's collective audience share is 30% or less, then the combination is not presumptively impermissible but must be analyzed under the second prong to determine its permissibility. The threshold of "30%" has been selected because that is the threshold under antitrust case law in which a claim of attempted monopolization is typically accepted or for which undue concentration is found.[31]

The second prong of Hearst-Argyle's proposed rule would establish a direct audience share analog to the HHI and apply basic HHI analysis using that analog to determine whether a

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[31] *See, e.g.*, *United States v. Philadelphia Nat'l Bank*, 374 U.S. 321, 364 (1963) ("Without attempting to specify the smallest market share which would still be considered to threaten undue concentration, we are clear that 30% presents that threat."); *Mid-Nebraska Bancshares, Inc. v. Board of Governors of Fed. Reserve Sys.*, 627 F.2d 266, 271 (D.C. Cir. 1980); *H.L. Hayden Co. of New York, Inc. v. Siemens Med. Sys., Inc.*, 879 F.2d 1005, 1018 (2d Cir. 1989) (citing, *inter alia*, 3 Areeda and Turner, ANTITRUST LAW, at ¶ 835 (1978) ("[c]laims [of attempted monopolization] involving 30 percent or lower market shares should presumptively be rejected" (brackets in case's citation)).

combination is permissible. Therefore, instead of using advertising share, as the antitrust agencies would in their competition analysis, Hearst-Argyle proposes using Nielsen audience share data, as defined above, to determine an HHI analog, which, for purposes of discussion, Hearst-Argyle is calling the "Audience Market Index" ("AMI"). The AMI is, simply, the sum of the squares of the individual audience shares of all local television stations in the relevant DMA.[32] For example, if a given local television market, with no duopolies, were comprised of Station 1 with an audience share of 16.4, Station 2 with an audience share of 11.7, Station 3 with an audience share of 9.7, Station 4 with an audience share of 3.9, and Station 5 whose audience share is too low to be reported by Nielsen, then the AMI for this hypothetical market would be calculated as follows:

$$\text{AMI} = 16.4^2 + 11.7^2 + 9.7^2 + 3.9^2 + 0^2 = 515$$

Audience market concentration is divided along a spectrum, as measured by the AMI (and directly analogous to the HHI under the *Horizontal Merger Guidelines*[33]), as follows:

Unconcentrated	AMI less than 1000
Moderately concentrated	AMI between 1000 and 1800
Highly concentrated	AMI greater than 1800

Then, in evaluating a proposed combination of local television stations, the Commission would consider both the *post-combination market concentration*, as measured by the AMI, and the *increase*

[32] Although the audience share aggregates the share with respect to all available television channels, the AMI is the sum of the squares of the audience shares of only the local television stations because those are the only market participants whose combination is of concern. That is, a local television station combining with an out-of-market television station does not implicate the Commission's local television ownership rule but its national ownership rule instead. Similarly, there is no prohibition against a cable company that owns cable channels from merging with a local television station.

[33] *See 1992 Horizontal Merger Guidelines* at § 1.5.

in concentration resulting from the combination, as measured by the change in the AMI. For example, using the hypothetical market above, if Station 2 and Station 3 were to combine, the post-combination market concentration would be calculated as follows:

$$AMI = 16.4^2 + (11.7 + 9.7)^2 + 3.9^2 + 0^2 = 742$$

And the increase in concentration resulting from the combination would then be

$$\Delta AMI = 742 - 515 = 227$$

As a further analog to the *Horizontal Merger Guidelines*,[34] the Commission should regard combinations of local television stations as follows:

(a) Post-Combination AMI Less Than 1000. The Commission should regard the combination as posing no harm to diversity and competition and should permit the combination without further analysis, regardless of the amount of increase in the AMI.

(b) Post-Combination AMI Between 1000 and 1800. If the combination produces an increase in the AMI of less than 100 points, the Commission should regard the combination as posing no harm to diversity and competition and should permit the combination without further analysis. If the combination produces an increase in the AMI of more than 100 points, then the combination should be impermissible unless the stations can carry the burden of proof under a "failing" or "failed" station exception.

(c) Post-Combination AMI Greater Than 1800. If the combination produces an increase in the AMI of less than 50 points, the Commission should regard the combination as posing no harm

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[34] *See 1992 Horizontal Merger Guidelines* at § 1.51. For the sake of simplicity and to maintain the certainty that the markets appreciate in bright-line tests, Hearst-Argyle does not propose that the Commission import in its entirety the *Horizontal Merger Guidelines*. For example, Hearst-Argyle does not propose that the Commission utilize the factors set forth in Sections 2-4 of the *Guidelines*, although the Commission should utilize a factor, such as that set forth in Section 5 of the *Guidelines*, for a "failing" or "failed" station exception.

to diversity and competition and should permit the combination without further analysis. If the combination produces an increase in the AMI of more than 50 points, then the combination should be impermissible unless the stations can carry the burden of proof under a "failing" or "failed" station exception.

Two further examples illustrating the basic operation of the proposed rule are set forth in the attached Appendix.

Hearst-Argyle believes this proposal satisfies all reasonable desiderata for a structural ownership rule for local television ownership:

* Audience shares are a reasonable, objective measure of diversity and competition.[35] Nielsen share data capture who and how many are watching what. Thus, share data serve as a reasonable, aggregated proxy for outlet, source, and program diversity, and these forms of diversity, in turn, are the best means to achieve viewpoint diversity, an otherwise elusive concept that no one, including the Commission, has yet devised a way to measure directly. In addition, share data also measure the relative success of television channels in competing for viewers.

* By limiting the reach of common ownership, a proposed local television ownership rule predicated on audience share insures outlet diversity. By limiting common ownership of stations to those whose collective audience share is 30% or less, the proposed rule insures that there will always remain at least four owners of significantly viewed channels available to consumers in any given DMA.

* Because the AMI, or change in AMI, includes measurement of all viewable channels, even less popular channels can materially affect the prospects for any given combination. Thus, the continued existence and importance of these channels provide avenues for source and program diversity.

* Source and program diversity are also preserved because a common owner will seek to differentiate its programming among its various channels.[36] Thus, co-owned stations will program different formats (program diversity), and obtaining that diverse programming will require that content to be obtained from multiple sources (source diversity).

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[35] *See Notice* at ¶ 46 (seeking comment on the use of ratings figures); ¶ 60 (seeking comment on how to measure market power if the Commission's analysis focuses on competition for viewers)

[36] *See Notice* at ¶ 82 & n.159 (citing economic studies supporting the plausibility of this argument).

* The proposed approach resolves the issue of accounting for the fact that more than 86% of American households pay for television.[37] All viewable channels are included in the analysis, and the probability that a Nielsen diary may be completed by an over-the-air viewer or an MVPD subscriber is reflected in the final share data.

* The proposed approach supplements the Commission's review of competitive advertising and market considerations.[38]

* Like NAB's proposal, this approach captures consumer substitutability of television channels, be they over-the-air or cable or DBS, and avoids the arbitrariness of voice counting. In addition, the basic approach remains simple: it obviates the need to consider consumer substitutability of other media for television, especially since there is no common metric among these other media.

* The proposal is likely to survive judicial scrutiny since its pedigree is antitrust law and analysis, including both the 30% hard cap (derived from U.S. Supreme Court precedent) and the AMI analysis (a direct analog of HHI analysis under the *Horizontal Merger Guidelines*). There is nothing arbitrary about it.

* The proposal is responsive to Chairman Powell's desire to formulate an antitrust analog for its structural ownership rules.

* Under the proposal, there are no theoretical oddities, such as seemingly permitting stations with a 9.0 and 91.0 share to combine.

* The proposal has the virtue of stability. Changes in a station's audience ratings of a few tenths of a point, as averaged over a year, will generally have no material impact on whether a combination is permissible.

* The proposal accommodates all types of combinations, including triopolies, common ownership where at least one station is a full-power satellite, and common ownership involving attributable LMAs.

* The proposal is indifferent to market size. Therefore, there is no inherent bias against providing relief for broadcasters in smaller-sized markets.

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[37] *See Notice* at ¶ 48 (seeking comment on how the 86% MVPD subscription rate affects diversity analysis).

[38] *See Notice* at ¶¶ 58-60 (seeking comment on whether the Commission should focus on consumers and/or on advertisers and how it should go about doing so).

* The approach consists of bright-line tests, providing critical certainty to the markets, yet it accommodates one exception, for "failed" or "failing" stations, which is unlikely to have the effect of ratcheting up concentration levels over time with developing Commission precedent.

* The proposal appears to satisfy some of the concerns raised by public interest and consumer groups in their comments. For example, Consumer Federation of America advocates use of an HHI-like construct to determine local media market concentration. In addition, several such commenters support defining local markets as narrowly as possible, and the proposal is at least partially responsive to this concern, for while it includes all television channels (from broadcast, cable, and DBS) in its audience share metric, it excludes radio, newspapers, and the Internet.[39]

* The approach will be straightforward for Commission staff to apply, greatly speeding application processing time and freeing up Commission resources for other tasks.

In sum, although admittedly not a simple as NAB's proposal, Hearst-Argyle believes that its proposal makes up for the slight increase in complexity by providing a comprehensive approach to revising the local television ownership rule.

Given the D.C. Circuit's construction of Section 202(h) of the Telecommunications Act, both in *Sinclair* and in *Fox Television Stations*, it is apparent that this is not the time for the Commission to be timid in relaxing the local television ownership rule. Because the "evils" of common local ownership have not been demonstrated—indeed, none of the twelve media studies released by the FCC suggests *any* harm would flow from relaxation of the rule—the Commission should consider taking the bold step of permitting common ownership of local television stations as outlined above.

II. The Commission Should Repeal the Newspaper/Broadcast Cross-Ownership Rule

The facts supporting repeal of the newspaper/broadcast cross-ownership rule hardly need to be restated. As demonstrated above in the discussion of the local television ownership rule, there

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[39] *See* Comments of Consumer Federation of America at 284-289; Comments of Communications Workers of America at 8, 15, 47; Comments of United Church of Christ at 42-46; Comments of AFL-CIO at 53-56.

are multiple and diverse outlets for news and information competing for the attention of consumers. Indeed, as pointed out in Hearst-Argyle's previous filings advocating repeal of the cross-ownership ban, Hearst-Argyle undertook its own comprehensive examination of traditional media "voices" in each of the nation's 210 DMAs and found that, on average, each DMA is home to 81 traditional media "voices" for which there are 39 separate owners.

Commenters continue to be split on the question whether advertisers (not to mention audiences) view newspapers and broadcast television stations as substitutes.[40] But the question need not be definitely answered since an answer either way supports repeal of the rule. As Hearst-Argyle has pointed out, if newspapers and televisions stations are not substitutes, then, obviously, there would be no harm to competition if the cross-ownership ban were repealed.[41] Conversely, if newspapers and television stations are substitutes, then the explosive growth in news, information, and entertainment sources will protect and enhance competition.

Some public interest groups supporting retention of the rule cite a claimed lack of (or even the alleged suppression of) viewpoint diversity among co-owned or "converged" newspaper/broadcast facilities. However, the "evidence" behind their complaints is purely anecdotal rather than empirical.[42] More importantly, this "evidence" of alleged viewpoint suppression, even

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[40] Moreover, it is disingenuous for some of the commenters to argue that newspapers and television should be considered as separate markets when analyzing the anticompetitive impact of proposed duopolies, yet then turn around and argue that newspapers and television markets should be considered together when analyzing the anticompetitive impact of proposed newspaper/broadcast television combinations. Newspapers and television stations are either substitutes for one another or not, but they cannot be simultaneously both substitutes and not substitutes.

[41] As the Commission itself has previously acknowledged, "[p]rohibition of . . . newspaper and television . . . cross-ownership would make little sense unless these different media were important substitutes for each other." Amendment of § 73.3555 of the Commission's Rules Relating to Multiple Ownership of AM, FM and Television Broadcast Stations, *Report and Order*, 100 FCC 2d 17 (1984), at ¶ 29, *recon. granted in part and denied in part*, 100 FCC 2d 74 (1985).

[42] *See, e.g.*, Comments of Communications Workers of America at 32-39; Comments of (continued...)

if true—which Hearst-Argyle does not concede and which one of the Media Ownership Working Group studies effectively rebuts[43]—misses the larger point. The question is not whether one particular (combined) media outlet champions viewpoint diversity, but whether overall viewpoint diversity is preserved across an entire local media marketplace. Again, Hearst-Argyle's "independent voices" analysis reveals that the average DMA contains 39 separate owners of local media voices, as the Commission has traditionally counted such voices. Thus, if a newspaper and television station were to merge in an average DMA, there would still remain 38 separate owners of local media voices in that average DMA. Any perceived or actual threat to viewpoint or outlet diversity, therefore, will have little effect on overall diversity in any particular DMA. Therefore, the concern of these public interest groups is fundamentally misplaced.

In short, there is no record evidence upon which the Commission could retain or even relax the newspaper/broadcast cross-ownership rule. The record evidence, to the contrary, supports repeal of the rule, and Section 202(h), accordingly, mandates its abolition.

Conclusion

For the foregoing reasons, as well as those set forth in Hearst-Argyle's opening comments and it previous comments and reply comments in MM Docket No. 01-235, the newspaper/broadcast cross-ownership rule should be repealed and the local television ownership rule significantly relaxed as outlined above.

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[42](...continued)
AFL-CIO at 40-46; Comments of Consumer Federation of America at 227-34.

[43] *See* Pritchard, MOWG 2002-2.

Respectfully submitted,

HEARST-ARGYLE TELEVISION, INC.

Wade H. Hargrove

Mark J. Prak

David Kushner

Charles Marshall

BROOKS, PIERCE, McLENDON,
HUMPHREY & LEONARD, L.L.P.
First Union Capitol Center, Suite 1600
150 Fayetteville Street Mall (27601)
Post Office Box 1800
Raleigh, North Carolina 27602
Telephone: (919) 839-0300
Facsimile: (919) 839-0304

Its Attorneys

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Appendix

Two Examples Illustrating the Basic Operation of Hearst-Argyle's
Local Television Ownership Rule Proposal

Example 1

	Share	*Owner*
Station 1	20.4	A
Station 2	9.8	B
Station 3	6.7	C
Station 4	3.1	D
Station 5	Not Reported (= 0.0)	E

In Example 1, Station 1 and Station 2 could not combine because their collective share is greater than 30% [$20.4 + 9.8 = 30.2 > 30$] even though, post-combination, the AMI would be less than 1000 [$(20.4 + 9.8)^2 + 6.7^2 + 3.1^2 + 0^2 = 967 < 1000$]. Note that this result is different than would obtain under NAB's "10/10" proposal.

All other duopoly possibilities are permissible because the AMI, post-combination, is less than 1000 in all cases. Moreover, the triopoly of Stations 2, 3, and 4 is also permissible for the same reason [$20.4^2 + (9.8 + 6.7 + 3.1)^2 + 0^2 = 800 < 1000$].

Example 2

	Share	*Owner*
Station 1	23.1	A
Station 2	14.4	B
Station 3	9.8	B
Station 4	5.9	C
Station 5	2.1	D
Station 6	N/R (= 0.0)	E

In Example 2, the current AMI for the market is 1158 [$23.1^2 + (14.4 + 9.8)^2 + 5.9^2 + 2.1^2 + 0^2$].

In this market, Station 1 could not combine with either Station 2 or Station 3, even if Owner B were willing to break apart its duopoly, because of the 30% hard cap [$23.1 + 14.4 = 37.5 > 30$; $23.1 + 9.8 = 32.9 > 30$]. Similarly, Stations 2 and 3 could not combine with Station 4 because the audience share of the stations of one owner, post-combination, would collectively exceed the 30% cap [$(14.4 + 9.8) + 5.9 = 30.1 > 30$].

Station 1 also could not combine with Station 4, even though the collective audience share is less than 30% [$23.1 + 5.9 = 29.0 < 30$] because the AMI, post-combination, is greater than 1000 [$(23.1 + 5.9)^2 + (14.4 + 9.8)^2 + 2.1^2 + 0^2 = 1431 > 1000$] and the change in AMI is greater than 100 [$1431 - 1158 = 273 > 100$]. Station 1 could combine with Station 5, however, because, even though the AMI, post-combination, is greater than 1000 [$(23.1 + 2.1)^2 + (14.4 + 9.8)^2 + 5.9^2 + 0^2 = 1255 > 1000$], the change in AMI is less than 100 [$1255 - 1158 = 97 < 100$]. For the same reason, Station 1 could combine with Station 6 [$(23.1 + 0.0)^2 + (14.4 + 9.8)^2 + 5.9^2 + 2.1^2 = 1158 > 1000$; $1158 - 1158 = 0 < 100$]. Moreover, Station 1 could combine with both Stations 5 and 6 [$(23.1 + 2.1 + 0.0)^2 + (14.4 + 9.8)^2 + 5.9^2 = 1255 > 1000$; $1255 - 1158 = 97 < 100$]. Stations 2 and 3, however, could not combine with Station 5 because the AMI, post-combination, is greater than 1000 [23.1^2

$+ (14.4 + 9.8 + 2.1)^2 + 5.9^2 + 0^2 = 1260 > 1000$] and the change in AMI is greater than 100 [$1260 - 1158 = 102 > 100$]. Stations 2 and 3 could combine with Station 6 [$23.1^2 + (14.4 + 9.8 + 0.0)^2 + 5.9^2 + 2.1^2 = 1158 > 1000$; $1158 - 1158 = 0 < 100$]. Finally, Stations 4 and 5 could combine because the AMI, post-combination, is greater than 1000 [$23.1^2 + (14.4 + 9.8)^2 + (5.9 + 2.1)^2 + 0^2 = 1183 > 1000$] but the change in AMI is less than 100 [$1183 - 1158 = 25 < 100$].

* * *